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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,714	11/17/2003	Ronald M. Fritsch	20030155.ORI	2337

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MINNEAPOLIS, MN 55402

EXAMINER

SHAW, ELIZABETH ANNE

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 08/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/714,714

Applicant(s)

FRITSCH, RONALD M.

Examiner

Elizabeth A. Shaw

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7 and 11 is/are rejected.
- 7) ☒ Claim(s) 5, 6 and 8-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/17/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 7 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (PTO-1449-C 3,858,555). Smith shows an animal holding pen comprising a front panel 28, a rear panel 26, left and right side panels 14 being generally rectangular and of a smooth material, the front and rear panels 28, 26 having apertures (unnumbered) of a predetermined width formed therethrough at vertically spaced locations adjacent opposed vertical edges of the panels. Fasteners 16 are affixed to the side panels 14 at vertically spaced locations corresponding to the spacing between the first and second apertures and adapted to fit through the apertures when the fasteners are in a first orientation but not when in a second orientation. The front panel 28 having an opening 34 sufficiently large enough for a confined animal's head to pass through and a food pail holder 36 affixed to the front panel 28 below the opening 34. The side panels having reinforcing strut 2 disposed along opposing vertical edges thereof with the fasteners 16 being affixed to the struts 2. The panels 14, 26, 28 having reinforcements 7, 19 integrally formed along the top and bottom edges thereof.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Hammett et al (5,144,912). Smith does not teach a food pail holder having a platform through which a pail can be inserted and retained, the platform being pivotally joined and the platform mounted between a pair of vertical ribs. Hammett et al show an animal feeding device 11 having a platform 14 with at least one 15, 16 formed therein through which a food pail is capable of being inserted. The platform 14 being pivotally joined to a panel 30 to be movable from the position parallel to the panel to a position perpendicular to the panel, see fig. 2. With respect to claims 3-5, to use the pivotable platform of Hammett et al with the holding pen of Smith would have been obvious to one skilled in the art as a replacement of functional equivalents and further to present a more compact form when the pen is disassembled. With further respect to claim 5, it is considered that the platform of Hammett et al can only be mounted to the front panel 28 of Smith below the feeding openings 34 for it to be effective, therefore the mounting location is between a pair of spaced-apart vertical ribs 2.

Allowable Subject Matter

Claims 5, 6 and 8-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

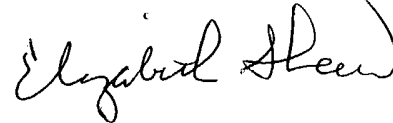
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Included for further reference on animal holding pens are: Jaeger (988,715), Taber (1,224,234), Hammer (2,003,767), Porter (3,160,140), Mills (3,580,411) and Ecker (3,857,540).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Shaw whose telephone number is 703-308-1853. The examiner can normally be reached on M-Th 9:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

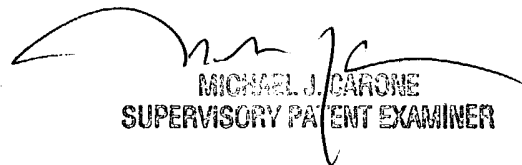
Art Unit: 3644

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Elizabeth A. Shaw
Examiner
Art Unit 3644

Aug. 5, 2004



MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER